
Second Session
Geneva, 15-26 July 2002

Core questions on ERW by the Coordinator

As announced during the first meeting of the CCW Group of Governmental Experts (GoGE), I would like to submit a number of core questions pertaining to the Mandate on ERW as laid down in CCW/CONF.II/2 page 35/36.

There seems to be a general recognition among States Parties that ERW pose an urgent humanitarian problem, and that we should try to do something about it. What exactly, remains the object of our work.

The Group shall consider all factors, appropriate measures and proposals, in particular on the 5 areas of interest that are specified in the mandate.

A number of discussion and other working papers were presented at the first session of the Group, which will continue to offer a basis for substantive debate in the Group during the July session.

In order to focus our discussion at that session, and in follow-up to those papers and views expressed, I would like to draw your attention to the following points.

1. Factors and types of munitions that could cause humanitarian problems after a conflict.

We should try to establish which factors and types of munitions are most relevant to causing casualties after a conflict. The main question is whether we should focus consideration on certain specified weapons or classes of weapons or approach the issues on the basis of a generic definition of ERWs, or could work, perhaps in stages, on the basis of a dual track approach. The idea behind the dual approach is that if it is desired for intensive work to proceed on some aspects of the mandate (e.g. para 2 on technical improvements) we may need to specify which munitions need to be improved in order to consider the relevant technical issues, while for other aspects (e.g. para 4, clearance) we do not need to be very specific, as all unexploded munitions need to be cleared after a conflict.

There is a choice to be made between 3 possibilities: specific, generic or both. The generic definition seems to be relatively straightforward: all UXO, with the exception of mines which are subject to other existing instruments. The initial factual findings in discussion paper WP5 seem to suggest that only one or two types of munitions are candidates for the type of measures referred to in para 2 of the mandate, and consequently in para 5 on assistance & co-operation.

2. Technical improvements and other measures for relevant types of munitions, including submunitions, which could reduce the risks of such munitions becoming ERW.

While there may be certain generic responses to this question, answers are most likely to depend on which weapon or weapon system is being considered. It would therefore be necessary to establish which types of munitions would be subject to appropriate preventive measures. Obviously, such an exercise would fall within the weapon specific approach identified above under 1. We would have to assess technical specifications, financial implications, lead-time to replace existing stocks, assistance & co-operation, and other related questions. Discussion paper WP4 provides a good factual inventory of the sort of measures that could be considered under this paragraph of the mandate.

I would also like to pose the question of whether it would be feasible to consider a generic response to this question, for example general undertakings to increase reliability of future systems, while recognising that more intensive and extended work will be necessary to deal with specific systems given the complexity and sensitivity of the relevant issues. A possible approach could be to commence work on the one or two types of munitions that so far seem to be of most concern, and working out the consequences of possible measures for these types, while keeping open the option of addressing other types of munitions in a later phase, if desirable and feasible.

3. The adequacy of existing International Humanitarian Law (IHL) in minimising post-conflict risks, both to civilians and to the military.

At the May Meeting, discussion papers WP.9, WP.10 and WP.11 as well as the discussions which surrounded them, served to clarify two key concerns related to the adequacy of IHL in the context of ERWs:

First, with respect to the adequacy of IHL during conflict to protect civilian populations, there are existing provisions i.a. in the Geneva Conventions of 1949 and in Protocol I Additional to these Conventions. The question is whether these provisions are adequate to minimise the risks that ERW poses after a conflict, or – implicitly – whether additional specific IHL should be developed. Different answers to this question have been given by different delegations, and more study of this complicated aspect would be required. There are precedents in the CCW framework of restrictions on use of certain types of weapons under certain circumstances. The GoGE should establish whether or not there is a need for additional IHL on the use of (certain types of) munitions, with a view to minimising their impact after a conflict.

Second, with respect to the adequacy of IHL for preventive measures and in the context of post-conflict protection of civilian populations and clearance of ERW, it would appear that existing IHL does not cover such questions. It would be possible to create specific rules to cover such concerns. There are examples of such rules addressing equivalent concerns in the context of mines in APII which merit consideration. Preventive measures and post-conflict protection of populations and clearance of ERW are addressed in more detail in sections 2 and 4 of this paper.

4. Warning to the civilian population, in or close to, ERW affected areas, clearance of ERW, the rapid provision of information to facilitate early and safe clearance of ERW, and associated issues and responsibilities.

This part of the mandate comprises most of the post-conflict aspects of the problem. What can we do after a conflict to cope with the risks caused by UXO. For most of the possible post-conflict measures we can find good examples in existing instruments (e.g. on mines), but at the same time this brings us to the fundamental question whether in the case of ERW these kind of measures would be sufficient or not sufficient. Clearly there are some fundamental differences between UXO and mines, and these differences should be taken into account.

On responsibility for clearance there are diverging views whether comparable provisions in APII are an appropriate model, or whether responsibilities should be developed that go beyond this example. Another difficult question is what I would like to call the issue of “past ERW” and responsibility for its clearance. For this issue it would seem to be difficult to reach consensus on either an all- or-nothing outcome. The real question might be whether something in between could be conceivable (e.g. best efforts, and the understanding that within clearing operations no distinction is made between recent ERW and past ERW).

As to the specific versus generic approaches, it seems that on warning and clearance we are unlikely to need to specify types of munitions. The same goes for most of the aspects concerning provision of information, with the possible exception of the munitions-specific information that would be required for the neutralisation of certain types of munitions. Further consideration will be needed on whether this would need to be specified in possible measures on the provision of information. There is also the question of abandoned munitions, and whether this issue could be subsumed under the general heading of clearance or would require separate treatment.

5. Assistance and co-operation (A&C).

As in the case of clearance, the main question for this part of the mandate is whether the existing example of APII is the right model, or whether more tailor-made, and possibly more ambitious language, could be developed for assistance and co-operation in the case of ERW. The post-conflict dimension of A&C would seem to be of a generic nature, the preventive dimension would probably bear a munitions specific character. Both post-conflict and preventive dimensions of A&C are identified in WP.4.

Way forward: negotiating a legally-binding instrument or instruments on ERW and/or other approaches.

As it seemed premature to discuss the way forward at the very first meeting of the GoGE, more thought will have to be given to recommending a way forward at a later stage, as we develop a better understanding in the Group on matters of substance. However, I shall be grateful for any thoughts you may wish to share with me on this last element of the mandate, either before or during the next session of the Group.